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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 218

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS,

Appellant,

vs.

BROTHERHOOD OF RAILROAD TRAINMEN, RICHARD ABRAM, CHAIRMAN AND STATE LEGISLATIVE REPRESENTATIVE, AND ILLINOIS COMMERCE COMMISSION.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT AS TO JURISDICTION.

BRUCE A. CAMPBELL,
RUDOLPH J. KRAMER,
CARLETON S. HADLEY,
WALTER N. DAVIS,
LOUIS A. MCKEOWN,
Counsel for Appellant.

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Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS TO THE SUPREME COURT OF THE UNITED STATES.

STATEMENT AS TO JURISDICTION ON APPEAL.

Preliminary Statement.

To acquaint the Court with the nature and character of this proceeding, and in order that our statement in support of the jurisdiction of the Supreme Court of the United States on direct appeal may be better understood, we preface this statement with a short history of the case.

On March 4, 1938, appellee, Brotherhood of Railroad Trainmen, by its Chairman and State Legislative Representative, filed with appellee, Illinois Commerce Commission, its petition, alleging that appellant here was a public utility, subject to the provisions of the Act of the State of Illinois providing for the regulation of public utilities; that appellant had failed to provide caboose cars for switchmen in the territory in, around and about East St. Louis, Illinois, and as a result thereof switchmen in the performance of their duties on transfer runs were necessarily required either to ride on the drawbar, in between freight cars, or on the top of, or on the side of freight cars, where numerous reduced vertical and horizontal clearances prevail, thus endangering the life, health and safety of the aforesaid switchmen of transfer cars and of other employes of appellant and of the public within the State of Illinois (Tr. 2—22, 23). The petition prayed that appellant be required to answer the charges, and that the Illinois Commerce Commission would make such order in the premises as might seem meet.

Appellant answered this petition, denying the allegations thereof, expressly denying that the Commission had any power, right or authority to enter any order in regard to the subject matter of the complaint so far as any movements in interstate commerce were concerned, and expressly averring that so far as interstate movements of trains or cuts of cars were concerned, the Commission had no power, jurisdiction or authority to enter any order requiring cabooses upon interstate runs between the State of Illinois and the State of Missouri; and expressly raised the question of the jurisdiction of the Commission so far as any interstate runs or movements were concerned (Tr. 2—23, 24).

On February 1, 1940, the Illinois Commerce Commission entered its findings and order in this cause. By said order

(Tr. 2—1 to 17), after extensive findings as to the need of caboose cars, the Commission found by its Finding 34 (Tr. 2—15), that it was reasonable to require appellant to furnish, maintain and operate caboose cars throughout the year on its transfer delivery and industrial runs, twenty in number, between certain of its yards located in the State of Illinois; and likewise, by its Finding 35 (Tr. 2—16) found that it was reasonable to require appellant to furnish, maintain and operate caboose cars throughout the year on its transfer delivery runs in the State of Illinois on all runs over the Eads and Merchants Bridges between the States of Illinois and Missouri. After making such findings, the Commission ordered (Tr. 2—17) that appellant be required and directed to furnish, maintain and operate caboose cars on its transfer, delivery and industrial runs, more specifically set forth in Finding 34 of the order, within sixty days from the date of the service of the order, and likewise that appellant be required and directed to furnish, maintain and operate caboose cars on its transfer and delivery runs, more specifically set forth in Finding 35 of the order, within thirty days after the date of the service of the order.

The Commission also by its order (Tr. 2—17) expressly denied the motion of appellant to dismiss the proceedings for want of jurisdiction.

Of the five members of the Commission, three voted in favor of the findings and order of the Commission and one Commissioner dissented as to the bridge runs covered by Finding 35 on the ground that the part of the order of the Commission based on Finding 35 was an attempt improperly and unlawfully to regulate interstate commerce and therefore beyond the jurisdiction of the Commission.

Appellant, complying with the statutory requirements, filed an application for rehearing before the Commission which application was denied. Appellant then appealed to

the Circuit Court of St. Clair County, Illinois, where the cause, as provided by the Illinois statutes, was heard on the record made before the Commission. On July 26, 1940, the Circuit Court of St. Clair County, Illinois, without opinion and passing only upon that portion of the order requiring caboose cars on runs across the bridges, found that that part of the order of the Commission requiring cabooses to be attached to runs moving between the States of Illinois and Missouri over the Eads and Merchants Bridges was an interference with interstate commerce and was beyond the jurisdiction of the Illinois Commerce Commission. The Circuit Court further found that under the decision rendered by the Supreme Court of Illinois in the case of *Brotherhood of Railroad Trainmen* v. *E. J. & E. Ry. Co.*, 374 Ill. 60, the power of the Circuit Court was limited to either affirming in its entirety or setting aside in its entirety the order of the Commission. The Circuit Court, under the last mentioned decision, therefore, having found that the order was bad in one respect, did not pass upon any other questions in the case for the reason that under said decision, if the order of the Commission was erroneous in one respect it must necessarily be set aside. The order and judgment of the Circuit Court appear in the Transcript p. 2—269-270. In its opinion in the instant case (Tr. 9) the Supreme Court of the State of Illinois reiterated and reaffirmed the procedural law as found by the Circuit Court. After making such findings, the Circuit Court ordered and adjudged that the said order and decision of the Illinois Commerce Commission in said cause be and the same was reversed and set aside. Appellees in this proceeding then duly perfected an appeal from the order and judgment of the Circuit Court to the Supreme Court of the State of Illinois.

While upon an argument of the merits of this appeal a further and more extended statement may be necessary,

yet on the question of the jurisdiction of the Supreme Court of the United States on appeal in this cause only a few of the facts are material.

Appellant is a railroad corporation, engaged wholly as a terminal and switching carrier engaged in yard operations, and its freight trains do not run on any regular schedule such as those of trunk lines do (Tr. 4-9). In Illinois it has three large yards, each of which consists of a number of tracks ranging in capacity from ten to seventy cars each, and with a very large number of tracks in each yard (Tr. 4-9, 10). In each of these yards during each eight-hour period during the entire twenty-four hour day, there are many switch crews engaged in breaking up and making up trains and in transporting such trains when made up either to one of the other yards in Illinois or to the yards of trunk lines in Illinois or to one of the four or five yards of appellant in Missouri (Tr. 4-10). In addition, appellant makes transfer deliveries to certain other railroad yards of trunk lines in Illinois (Tr. 4-9, 10).

Two railroad bridges operated by appellant span the Mississippi River, joining the East St. Louis district with St. Louis, Missouri, the bridges being known as the Eads Bridge and the Merchants Bridge. As to all of the bridge runs, nothing is transported except in interstate commerce. On the transfer runs between the yards of appellant in Illinois and between these yards and other trunk line yards in Illinois, 98% of the merchandise transported is carried in interstate commerce (Tr. 2-111). About 68 passenger trains cross the Eads Bridge every day and in the early part of the week about the same number of freight trains cross that bridge each day, while in the latter part of the week the number of freight trains exceeds the number of passenger trains (Tr. 2-106). Approximately the same number of trains cross the Mer-

chants Bridge every day (Tr. 2-107). It is impossible to cut off a caboose in the middle of the river and leave it standing on either of these bridges; there is no place to do this and it would tie up the main tracks (Tr. 2-106). It is impossible to couple to a caboose in crossing the river (Tr. 2-108). At the west end of the Eads Bridge the tracks enter a tunnel, which runs for about one mile under the City of St. Louis (Tr. 2-108). If cabooses were required on these bridge runs, it would be necessary on both bridges on runs to Missouri to attach the caboose in the yards in Illinois where the cut is made up and carry the caboose across the bridge (and when moving over the Eads Bridge, through the tunnel) into Missouri to the yards that the cut is destined to; and on runs from Missouri to Illinois it would be necessary likewise as to both bridges to attach the caboose in the yards in Missouri (and when moving over the Eads Bridge, run through the tunnel in Missouri), across the bridge and carry it to the yards in Illinois (Tr. 2-107). In other words, the order itself, although on its face limiting the provisions from and to the State line—the middle of the river—as a practical proposition requires cabooses, both coming into and going from Illinois, to be carried in Missouri between the middle of the river and a yard in Missouri (Tr. 2-107).

The only practical way to comply with the Commission's order would be to start in Missouri on movements to Illinois at the yards in Missouri and bring the caboose the whole way to the yards in Illinois; and on a movement from Illinois to Missouri to attach the caboose in the yards in Illinois and take it to the yards in Missouri. This situation applies to both bridges (Tr. 2-107).

The furnishing of cabooses has always been considered a working condition and has been dealt with as such by appellant and its switchmen, and cabooses have always